

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY,
Debtor.

PROMESA
Title III
No. 17 BK 3567-LTS

AMERINATIONAL COMMUNITY SERVICES,
LLC, as Servicer for the GDB Debt Recovery
Authority and CANTOR-KATZ COLLATERAL
MONITOR LLC,

Adv. Proc. No. 21-00068-LTS

Plaintiffs,

v.

AMBAC ASSURANCE CORPORATION,
ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP., NATIONAL
PUBLIC FINANCE GUARANTEE
CORPORATION, FINANCIAL GUARANTY
INSURANCE COMPANY, PEAJE INVESTMENTS

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

LLC, and THE BANK OF NEW YORK MELLON,
as Fiscal Agent,

Defendants.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of PUERTO RICO HIGHWAYS
AND TRANSPORTATION AUTHORITY; THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO as representative of
THE COMMONWEALTH OF PUERTO RICO,

Movants,

v.

AMERINATIONAL COMMUNITY SERVICES,
LLC, as Servicer for the GDB Debt Recovery
Authority and CANTOR-KATZ COLLATERAL
MONITOR LLC,

Respondents.

**NOTICE OF LIMITED JOINDER OF INTERVENING DEFENDANT PUERTO RICO
FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY TO INTERVENING
DEFENDANT FINANCIAL OVERSIGHT AND MANAGEMENT BOARD'S MOTION
TO DISMISS, OR IN THE ALTERNATIVE, TO STAY COUNTS I, II, AND IV OF THE
COMPLAINT**

Intervening Defendant the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), as the entity authorized to act on behalf of the Debtor entities pursuant to the authority granted to it under the Puerto Rico Fiscal Agency and Financial Advisory Authority Act, Act 2-2017 (the “AAFAF Enabling Act”), hereby submits this notice of limited joinder to the arguments raised in the *Intervening Defendant Financial Oversight and Management Board’s (“Oversight Board”) Memorandum of Law in Support of Motion to Dismiss, or in the Alternative, to Stay Counts I, II, and IV of the Complaint (“Memorandum”)*, solely to the extent set forth herein, and

requests that Counts I, II, and IV of the complaint be dismissed, or in the alternative, stayed, for the reasons stated below:

1. AAFAF joins the Oversight Board's arguments that Count I should be dismissed against the Commonwealth because HTA could not and did not grant a security interest in Commonwealth property (*see Memorandum § I*); that Counts I, II, and IV should be dismissed pursuant to Rule 12(b)(6) because the DRA Parties lack standing to bring objections to HTA bondholders' claims (*see id. § III*); that to the extent Counts I or IV seek a declaration regarding funds held by HTA (but not deposited in the fiscal agent controlled account), they do not present a justiciable case or controversy (*see id. § IV*); and that in the alternative, Counts I, II, and IV should be stayed or terminated pending the court's consideration of confirmation of the Plan that seeks to settle the bondholders' claims to which the DRA Parties object (*see id. § V*).

2. For these reasons alone, the Court should dismiss, or in the alternative, stay, Counts I, II, and IV of the complaint.

RESERVATION OF RIGHTS

3. The Memorandum argues that Count I should be dismissed because, according to the Oversight Board, PROMESA preempts the appropriation provisions of the Act 30-31 excise tax statutes. *See id. § II.*

4. Given the threshold reasons that exist to dismiss, or in the alternative, stay Count I, AAFAF believes the Court need not decide this preemption argument, and thus requests that the Court not address it. AAFAF reserves all rights with respect to preemption of any laws under Titles I and II of PROMESA.

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Dated: August 26, 2021
San Juan, Puerto Rico

Respectfully submitted,

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and Financial Advisory Authority*

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Luis C. Marini-Biaggi
Luis C. Marini-Biaggi